

STATE OF MICHIGAN
COURT OF APPEALS

QUALITY TEMPORARY SERVICES, INC.,
d/b/a Q-TEMPS,

UNPUBLISHED
June 28, 2005

Plaintiff-Appellant,

v

VENTURE AUTOMOTIVE CORPORATION,

No. 251996
Genesee Circuit Court
LC No. 02-075319-CK

Defendant-Appellee.

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted from the trial court's order granting in part and denying in part defendant's motion to set aside a default judgment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a company that supplies temporary employees to other companies, sued defendant, alleging that defendant failed to pay \$183,288.76 for services owed. Defendant did not answer the complaint, and, on plaintiff's motion, the trial court entered a default and default judgment. Defendant moved to set aside the default and default judgment, arguing that it had not been properly served with the summons and complaint and that it had a meritorious defense in that the debt to plaintiff was owed by an affiliated corporation.

The trial court found that defendant failed to show good cause for setting aside the default but that it had established the existence of a meritorious defense by way of an affidavit asserting that the debt was owed by an affiliated corporation. The trial court proposed to set aside the default judgment with regard to damages but not with regard to liability. Counsel for plaintiff agreed to that arrangement.

A motion to set aside a default or a default judgment is to be granted only if the movant shows good cause and files an affidavit of meritorious defense. MCR 2.603(D)(1). Good cause may be proven by

[1] a substantial procedural irregularity or defect, [2] a reasonable excuse for failure to comply with the requirements that created the default, or [3] some other reason why a manifest injustice would result if the default judgment were not set

aside. [*Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 229-230; 600 NW2d 638 (1999).]

Manifest injustice is not a discrete occurrence that can be assessed independently of a procedural defect or reasonable excuse. *Id.* at 233. Rather, manifest injustice occurs if a default is allowed to stand after a party has demonstrated good cause and a meritorious defense. *Id.* “[I]f a party states a meritorious defense that would be absolute if proven, a lesser showing of ‘good cause’ will be required . . . to prevent a manifest injustice.” *Id.* at 233-234.

We review a trial court’s decision to grant or deny a motion to set aside a default or a default judgment for an abuse of discretion. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996).

The trial court should not have set aside the default judgment with regard to damages absent a finding of both good cause and a meritorious defense. MCR 2.603(D)(1). However, reversal is not warranted because plaintiff’s counsel agreed to the trial court’s suggestion that the default judgment be set aside with regard to damages only. “[E]rror requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence” *Farm Credit Services v Weldon*, 232 Mich App 662, 683-684; 591 NW2d 438 (1998) (refusing to review the trial court’s decision to award the plaintiff attorney fees, because the defendants previously agreed to such an award on the record). Plaintiff’s counsel contributed to the trial court’s error.¹ Under the circumstances, plaintiff is not entitled to relief.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter

¹ Plaintiff is incorrect in arguing that the issue of plaintiff’s acquiescence in the trial court’s ruling cannot be considered by this Court because defendant did not raise the issue in a cross-appeal. Indeed, “‘a cross appeal is not necessary to urge an alternative ground for affirmance’” *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 221; 625 NW2d 93 (2000), quoting *In re Herbach Estate*, 230 Mich App 276, 284; 583 NW2d 541 (1988).